IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

In re:	)	Chapter 11
Gulf Packaging, Inc.,	)	Case No. 15-15249
Debtor.	)	Honorable Judge Pamela S. Hollis
Joseph E. Myers, as Creditor Trustee for the Gulf Packaging Creditor Trust,	)	
Plaintiff,	)	Adv. No. 17-________
v.	)	
Central Freight Lines, Inc.	)	
Defendant.	)	

COMPLAINT

Joseph E. Myers, as Creditor Trustee (the "*Creditor Trustee*") for the Gulf Packaging, Inc. Creditor Trust (the "*Creditor Trust*"), through his undersigned counsel, brings this Complaint (the "*Complaint*") to avoid and recover transfers and for related relief under §§ 544, 547, 548, 550, and 502(d) of title 11 of the United States Code (the "*Bankruptcy Code*"). The Creditor Trustee alleges as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this adversary proceeding (the "*Adversary Proceeding*"), which arises under the Bankruptcy Code, and arises in and relates to a case under the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Illinois, case number 15-15249, under 28 U.S.C. §§ 157 and 1334. This is a core proceeding

within the meaning of 28 U.S.C. § 157(b)(2), and venue is proper in the Northern District of Illinois under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested in this Complaint are §§ 544, 547, 548, and 550 of the Bankruptcy Code, and Federal Rule of Bankruptcy Procedure 7001(1).

BACKGROUND

I. The Bankruptcy Case and the Parties to this Adversary Proceeding

3. Gulf Packaging, Inc. (the "*Debtor*") filed a voluntary chapter 11 bankruptcy petition on April 29, 2015 (the "*Petition Date*").

4. After the sale of substantially all of the Debtor's assets in the bankruptcy case, the Debtor submitted a plan of liquidation (the "*Plan*") to the Court,[1] providing for the orderly liquidation of the Debtor's remaining assets. The Court confirmed the Plan by an order dated December 15, 2015 (the "*Confirmation Order*").[2]

5. The Creditor Trust was created under the Plan for the benefit of holders of allowed claims and interests in the Debtor's estate. The purpose of the Creditor Trust is to provide a means of liquidating and monetizing Creditor Trust proceeds, in part through the prosecution of transferred avoidance actions under chapter 5 of the Bankruptcy Code.

6. Under the terms of the Plan, Confirmation Order, and related Creditor Trust Agreement,[3] all of the Debtor's remaining assets were transferred to the Creditor Trust on January 22, 2016, the effective date of the Plan. Included among the assets transferred to the Creditor Trust were actions under chapter 5 of the Bankruptcy Code.

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[1] (BK Dkt. 266.)

[2] (BK Dkt. 317.)

[3] (BK Dkt. 331.)

7. Under section 3.2 of the Creditor Trust Agreement, the Creditor Trustee is charged with prosecuting and liquidating chapter 5 avoidance actions. Accordingly, the Creditor Trustee has the authority to prosecute and settle the claims asserted in this Complaint.

8. On information and belief, the defendant's name is Central Freight Lines, Inc. (the "*Defendant*"), and is a business entity organized under the laws of the state of Texaswith its principal place of business in Waco, Texas.

9. On information and belief, the Defendant received transfers from the Debtor during the Two Year Period (defined below), as more specifically identified in the exhibits to this Complaint.

II. The Debtor's Prepetition Operations & Failed Roll-up

10. The Debtor was formed as a Texas corporation on February 14, 2012, for the purpose of a "roll-up" of a number of independent entities, referred to by the Debtor in its bankruptcy filings as "Affiliates."

11. All of these "Affiliates" were companies that had some sort of a relationship—some formal and others informal—to the Debtor, but all of which operated independently. While the Debtor used the term "Affiliates," to refer to these entities in its bankruptcy filings, they were not actual "affiliates," of the Debtor as defined under § 101(2) of the Bankruptcy Code.

12. Under the anticipated roll-up, the Affiliates would have remained separate legal entities, each with separate ownership, with the Debtor acting as a centralized accounting, marketing, and administrative entity.

13. The anticipated roll-up never came to fruition, and the Debtor never successfully integrated accounting, marketing, and administrative operations with the Affiliates. As a result, the Debtor and the Affiliates continued operating independently.

14. On or about March 31, 2014, the Debtor entered into a Loan and Security Agreement (the "*Loan*") with FCC, LLC ("*FCC*") pursuant to which FCC made certain loans to the Debtor.

15. In connection with the Loan, the Debtor granted FCC first priority liens on substantially all of its assets.

16. The FCC Loan permitted the Debtor to borrow up to 85% of eligible accounts receivable and 50% of eligible inventory.

17. On information and belief, the value of the Debtor's assets, including accounts receivable and inventory, was in fact significantly less than the reported book values during the two years preceding the Petition Date (the "*Two Year Period*"), and at all times relevant to this Complaint.

18. During the Two Year Period, and at all times relevant to this Complaint, the Debtor's balance sheets included estimated book values of the Debtor's assets, including accounts receivable and inventory, showing that the Debtor's liabilities either (i) exceeded, or (ii) were marginally exceeded by, the book value of the Debtor's assets.

19. On information and belief, the substantial discrepancy between book and actual value was due to the fact that the Debtor's inventory was stale and in many cases unusable, and the accounts receivable were overstated.

20. As a result of this overvaluation, the sale of the Debtor's assets under § 363 of the Bankruptcy Code (which were principally comprised of the Debtor's inventory) yielded actual recoveries for the Debtor's bankruptcy estate far below the estimated book values.

21. Thus, during the Two Year Period, and at all times relevant to this Complaint, the Debtor was insolvent because the amount of the Debtor's liabilities exceeded the value of its assets.

22. Additionally, during the Two Year Period, the Debtor's tax returns covering the Two Year Period reported negative income for tax years 2013, 2014, and 2015. And on the face of its own internal financial statements, the Debtor reported a negative total equity amount from March 2014 through January 2015.

23. During the Two Year Period, it was the Debtor's business practice to routinely pay the Affiliates' vendors, including the Defendant, for goods that were neither shipped to, nor received by, the Debtor.

24. On information and belief, during the Two Year Period, there was no consistency to the Debtor's business practices with respect to the issuance of purchase orders to, or by, the Debtor and the Affiliates.

25. On information and belief, the Debtor's bookkeeping and payment procedures with respect to each of the Affiliates' vendors, and each of the Affiliates themselves, varied significantly.

26. During the Two Year Period, it was also the Debtor's routine business practice to make payments to vendors, including the Defendant, for invoices issued to the Affiliates, not the Debtor.

27. On information and belief, the Debtor did not receive anything of value in exchange for its payments to the Affiliates' vendors, including the Defendant.

28. The Creditor Trustee now brings this Complaint, seeking to recover the transfers from the Defendant, more fully described below.

COUNT I
Avoidance of Fraudulent Transfers Under 11 U.S.C. § 548(a)(1)(B)

29. The Creditor Trustee incorporates all preceding paragraphs of this Complaint as if fully realleged here.

30. During the Two Year Period, the Debtor made one or more transfers to the Defendant totaling at least $47,948.22, including, without limitation, those transfers more specifically identified in *Exhibit A* attached to this Complaint and incorporated here by reference, together with any other transfers later identified (the "*Fraudulent Transfers*" or "*Transfers*") by the Creditor Trustee.

31. Each Fraudulent Transfer constituted a transfer of an interest of the Debtor in property; namely, cash from a deposit account in the Debtor's name.

32. Each Transfer was made within two years before the Petition Date.

33. On information and belief, each Fraudulent Transfer paid an invoice issued by the Defendant to an Affiliate, not the Debtor.

34. As such, the Fraudulent Transfers were not made on account of antecedent debts owed by the Debtor to the Defendant.

35. On information and belief, the Defendant shipped goods to the Affiliates on account of the invoices paid by the Fraudulent Transfers, and the Debtor received nothing in exchange for each of the Fraudulent Transfers.

36. As such, the Debtor did not receive reasonably equivalent value in exchange for the Fraudulent Transfers.

37. The Debtor's liabilities exceeded its assets during the Two Year Period because the value of the Debtor's accounts receivable and inventory was significantly less than their reported book values.

38. On the date each Transfer was made, the Debtor was insolvent.

39. For these reasons, the Creditor Trustee may avoid the Transfers as fraudulent under § 548(a)(1)(B) of the Bankruptcy Code.

COUNT II
Avoidance of Preferential Transfers Under 11 U.S.C. § 547(b)
Pleaded in the Alternative to Count I

40. The Creditor Trustee incorporates paragraphs 1-28 of this Complaint as if fully realleged here.

41. During the ninety-day period preceding the Petition Date, between January 29, 2015 and April 29, 2015 (the "*Preference Period*"), the Debtor continued operating its business affairs, including transferring property, either by checks, cashier checks, wire transfers, direct deposit, or otherwise, to certain entities, including the Defendant.

42. Notwithstanding the Debtor's failure to complete the contemplated roll-up with the Affiliates, the Debtor held itself out as a national distributor of packaging equipment and supplies.

43. On information and belief, as a result of the Debtor's inconsistent bookkeeping and payment procedures with respect to each of the Affiliates' vendors, including the Defendant, the Debtor may have dealt with the Defendant on a direct basis, under which the Defendant issued invoices directly to the Debtor.

44. During the Preference Period, the Debtor made one or more transfers to the Defendant totaling at least $25,739.24, including those transfers more specifically identified in *Exhibit B* attached to this Complaint and incorporated here by reference, together with any other transfers later identified (the "*Preferential Transfers*," and together with the Fraudulent Transfers, the "*Avoidable Transfers*") by the Creditor Trustee.

45. The Defendant was a creditor of the Debtor within the meaning of § 101(10)(A) of the Bankruptcy Code at the time of each of the Preferential Transfers.

46. The Creditor Trustee has determined that the Preferential Transfers made by the Debtor were transfers of an interest of the Debtor in property through payments totaling at least $25,739.24.

47. Each Preferential Transfer was made to or for the benefit of the Defendant, within the meaning of § 547(b)(1) of the Bankruptcy Code, because each Preferential Transfer either reduced or fully satisfied a debt then owed by the Debtor to the Defendant.

48. Each Preferential Transfer was made for or on account of an antecedent debt owed by the Debtor to the Defendant before such Preferential Transfer was made.

49. The Debtor was insolvent throughout the Preference Period because the sum of the Debtor's respective debts was greater than the fair value of its respective assets.

50. Each Preferential Transfer was made on or within ninety days before the Petition Date.

51. Each Preferential Transfer enabled the Defendant to receive more than the Defendant would have if:

a. the Debtor's case was brought under chapter 7 of the Bankruptcy Code;

b. the Preferential Transfers had not been made; and

c. the Defendant had received payment of such debt to the extent provided by the Bankruptcy Code.

52. For these reasons, the Creditor Trustee may avoid the Preferential Transfers under § 547(b) of the Bankruptcy Code.

COUNT III
Recovery of Avoidable Transfers Under 11 U.S.C. § 550

53. The Creditor Trustee incorporates paragraphs 1-28 of this Complaint as if fully realleged here.

54. The Defendant was either (a) the initial transferee of the Avoidable Transfers; (b) the entity for whose benefit the Avoidable Transfers were made; or (c) an immediate or mediate transferee thereof.

55. Upon the avoidance of the Avoidable Transfers under §§ 548 or 547 of the Bankruptcy Code, the Creditor Trustee may recover the Avoidable Transfers, or the value of the Avoidable Transfers, from the Defendant or any mediate or immediate transferee under § 550 of the Bankruptcy Code.

COUNT IV
Disallowance of Claims Under 11 U.S.C. § 502(d)

56. The Creditor Trustee incorporates paragraphs 1-28 of this Amended Complaint as if fully realleged here.

57. Section 502(d) of the Bankruptcy Code provides that the claim of any entity or transferee receiving a payment that is avoidable under §§ 547 or 548 of the Bankruptcy Code shall be disallowed unless the entity or transferee turns over the payment or value of the payment.

58. The Defendant is the transferee of the Avoidable Transfers.

59. The Defendant has, or may claim to have, a claim or claims against the Debtor's estate.

60. The Defendant has neither paid nor surrendered the Avoidable Transfers or the value of the Avoidable Transfers to the Creditor Trustee.

61. The Creditor Trustee objects to any and all claims of the Defendant, including, without limitation, all prepetition and postpetition claims, pursuant to § 502(d) of the Bankruptcy Code.

62. For these reasons, the Creditor Trustee is entitled to judgment against the Defendant disallowing all claims of the Defendant unless and until the Defendant returns all amounts due to the Debtor's bankruptcy estate, and any other separately filed objections to such claims are resolved as provided by § 502(d) of the Bankruptcy Code.

RESERVATION OF RIGHTS

63. The Creditor Trustee reserves the right to bring any and all other causes of action he may maintain against the Defendant, including causes of action arising out of the same transactions set forth in this Complaint, and to the extent discovery in this action or further investigation by the Creditor Trustee reveals such other causes of action.

RELIEF REQUESTED

Wherefore, the Creditor Trustee requests that the Court enter judgment in his favor and against the Defendant, granting the following relief:

A. Avoidance and recovery of the Avoidable Transfers under §§ 548, 547, and 550 of the Bankruptcy Code;

B. Disallowance, under § 502(d) of the Bankruptcy Code, of any and all claims filed by the Defendant;

C. An award to the Creditor Trustee of prejudgment interest at the legally allowable rate;

D. An award to the Creditor Trustee of costs and expenses of this suit; and

E. Such other and further relief the Court deems just and appropriate.

Date: March 29, 2017

Joseph E. Myers, as Creditor Trustee for the Gulf Packaging, Inc. Creditor Trust

By: /s/ Aaron Hammer
One of Its Attorneys

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